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See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

NOV 26 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

)	2 CA-JV 2008-0076
)	DEPARTMENT A
)	
IN RE SEAN T.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
)	Rule 28, Rules of Civil
)	Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J-17385501

Honorable Ted B. Borek, Judge

AFFIRMED

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Tucson
Attorneys for State

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By George Haskel Curtis

Tucson
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P E L A N D E R, Chief Judge.

¶1 Sean T. was adjudicated delinquent after he admitted having committed attempted second-degree burglary and theft by control. On appeal, Sean challenges the portion of the juvenile court’s restitution order that required him to pay for the victim’s lost earnings, including time spent attending court proceedings, and the victim’s own labor in repairing property damaged in connection with the offenses he committed. We affirm for the reasons stated below.

Background

¶2 “On review, we consider the evidence in the light most favorable to upholding the juvenile court’s findings and resolve all inferences against the juvenile.” *In re David H.*, 192 Ariz. 459, ¶ 3, 967 P.2d 134, 135 (App. 1998); *see also In re Andrew C.*, 215 Ariz. 366, ¶ 6, 160 P.3d 687, 688 (App. 2007) (in reviewing restitution order, we consider facts in light most favorable to upholding award). In December 2007, Sean and two other minors broke into a residence and took the victim’s all terrain vehicle (ATV), some cash, a spare set of keys to the victim’s house and pick-up truck, and several other personal property items. While attempting to enter the house, the minors damaged the rear sliding glass door and the glass and wrought iron covering a side door. They also damaged the ATV.

¶3 At the restitution hearing, the victim testified he was the owner and sole employee of an automotive business and also a general “handyman.” When the victim discovered his spare set of keys had been stolen, he re-keyed the truck himself in his automotive shop and hired a locksmith to re-key his house. In addition, the victim repaired

the doors himself because he considered himself “superior” to anyone a repair company would have sent for the job. He also repaired the ATV. The victim sought restitution for his own labor on all of the foregoing repair work. He also sought “lost wages” for the two days immediately after the burglary when he had closed his business and stayed home to secure his residence before making the repairs. And he sought lost earnings for the time he had spent attending court hearings.

¶4 In a thorough minute entry ruling, the juvenile court ordered Sean, two other juveniles who had participated in the commission of the offenses, and the parents of all three juveniles, jointly and severally, to pay restitution to the victim in the total amount of \$9,064.71. Included in that amount were the following items: (1) \$2,762.50, based on a rate of \$85 per hour, for the victim’s lost wages incurred as a result of his having attended 16.5 hours of court hearings and having missed two days of work after the burglary; (2) \$632.50 for the victim’s labor to repair the doors, based on his having spent 11.5 hours, at \$55 per hour, the rate that he testified a company would have charged him to do the work; (3) \$424.50 for the victim’s own labor cost in re-keying his truck; and (4) \$1,175.21, including tax and fees of \$90.21, for the victim’s labor in repairing his ATV. On appeal, Sean challenges those four portions of the restitution award.¹

¹Although Sean says “he directly contests the award of \$4,859.14 plus the [\$84] sales tax,” we question his calculations because the total amount of restitution awarded is \$4,994.71.

Discussion

¶5 Sean argues the victim was not entitled to restitution for the time he spent repairing property damaged in the crime or in attending court proceedings when there was “no evidence of actual economic loss.” Sean contends that “a victim [who] voluntarily repairs his property damaged in a crime” should not “be compensated for his time, when monetarily he is not out of pocket.” And, assuming a restitution award may include compensation of a victim for the value of his own labor, Sean questions how the rate should be determined for calculating an appropriate restitution award.

¶6 Section 8-344(A), A.R.S., requires the juvenile court to order a delinquent juvenile “to make full or partial restitution to the victim of the offense for which the juvenile was adjudicated delinquent.” *See also* Ariz. Const. art. II, § 2.1(A)(8). And, pursuant to A.R.S. § 8-323(F)(9), a juvenile court may order a delinquent minor “to pay restitution to any person who suffered an economic loss as the result of the juvenile’s conduct.” *See also* A.R.S. § 13-603(C) (victim is entitled to restitution “in the full amount of the economic loss as determined by the court”). The propriety and amount of restitution must be established by a preponderance of the evidence. *See In re Stephanie B.*, 204 Ariz. 466, ¶ 15, 65 P.3d 114, 118 (App. 2003).

¶7 The juvenile court “has discretion to set the restitution amount according to the facts of the case in order to make the victim whole.” *In re Ryan A.*, 202 Ariz. 19, ¶ 20, 39 P.3d 543, 548 (App. 2002); *see also In re William L.*, 211 Ariz. 236, ¶ 12, 119 P.3d 1039,

1042 (App. 2005). Absent an abuse of discretion, which includes an error of law, we will not disturb the court’s restitution order. *In re Erika V.*, 194 Ariz. 399, ¶ 2, 983 P.2d 768, 769 (App. 1999). And we “will uphold [a] restitution award if it bears a reasonable relationship to the victim’s [compensable] loss.” *Ryan A.*, 202 Ariz. 19, ¶ 20, 39 P.3d at 548. When reviewing a juvenile court’s restitution order, “we also consider the restitution statutes and case law applicable in adult criminal prosecutions.” *William L.*, 211 Ariz. 236, n.3, 119 P.3d at 1042 n.3.

¶8 On the four items he challenges here, Sean maintains the juvenile court erred in awarding restitution because no evidence established that the crime had prevented the victim from completing any work in his automotive business or that he was “out any money for the time he spent repairing or sitting in court.” Therefore, he argues, the juvenile court had to speculate about the value of the victim’s time rather than determine what he actually lost, that is, “what expenses the victim actually paid resulting from the criminal offense.” *See In re Alton D.*, 196 Ariz. 195, ¶ 9, 994 P.2d 402, 404 (2000) (victim must “provide a basis for setting an amount that is not speculative”); *see also Town of Gilbert Prosecutor’s Office v. Downie ex rel. County of Maricopa*, 218 Ariz. 466, ¶ 13, 189 P.3d 393, 396 (2008) (“Restitution . . . should not compensate victims for more than their actual loss.”). But, as the state points out, the concept of economic loss is not limited to “out-of-pocket expenses” under Arizona law.

¶9 In the analogous context of adult criminal prosecutions, “[e]conomic loss” is defined by statute as “any loss incurred by a person as a result of the commission of an offense.” A.R.S. § 13-105(14). It includes “lost earnings and other losses that would not have been incurred but for the offense.” *Id.* “Economic loss,” however, “does not include . . . consequential damages.” *Id.*; *see also State v. Wilkinson*, 202 Ariz. 27, ¶ 7, 39 P.3d 1131, 1133 (2002); *William L.*, 211 Ariz. 236, ¶ 13, 119 P.3d at 1042 (“[I]f the loss does not flow directly from the defendant’s criminal activity, it is considered a non-recoverable, consequential damage.”). Economic loss includes any damage that directly results from the criminal conduct. *See State v. Morris*, 173 Ariz. 14, 17, 839 P.2d 434, 437 (App. 1992); *see also Andrew C.*, 215 Ariz. 366, ¶ 17, 160 P.3d at 690 (holding that breadth of dictionary definition of “‘economic’” “encompasses the breadth of the definition that the legislature intended when it determined that ‘economic loss’ meant ‘any loss,’ except as otherwise defined”). A restitution award may include lost wages that result from voluntarily attending court proceedings. *State v. Lindsley*, 191 Ariz. 195, 198-99, 953 P.2d 1248, 1251-52 (App. 1997); *see also Stephanie B.*, 204 Ariz. 466, n.4, 65 P.3d at 117 n.4.

¶10 Sean does not challenge the victim’s testimony or the juvenile court’s factual findings. Nor does he dispute the causal connection between the offenses he committed and the victim’s time spent repairing his damaged property or attending court proceedings. *See In re Maricopa County Juv. Action No. JV-128676*, 177 Ariz. 352, 353, 868 P.2d 365, 366 (App. 1994) (must be “causal connection between the criminal conduct and the claimed

loss”); *see also* *Stephanie B.*, 204 Ariz. 466, ¶ 10, 65 P.3d at 117; *Morris*, 173 Ariz. at 17, 839 P.2d at 437. Rather, as noted above, he questions whether the victim suffered “actual economic loss” and claims the juvenile court simply speculated in “set[ting] the rate of compensation” for valuing and calculating the victim’s lost earnings and labor time when quantifying the restitution awards for those items.

¶11 The court in *Ryan A.* rejected a similar argument. There, the victim’s mother was compensated for time she had spent attending a court hearing. *Ryan A.*, 202 Ariz. 19, ¶ 28, 39 P.3d at 549. The juvenile argued that the victim’s loss was “non-monetary because she only missed appointments with clients that she rescheduled.” *Id.* But this court rejected the juvenile’s “argument that there was no economic loss” in those circumstances and instead found that the juvenile court had properly awarded what the victim would have been compensated “but for the hearing.” *Id.*

¶12 Similarly, the victim here testified he had completed the jobs “already on the book” after he returned to work. But, as in *Ryan A.*, the victim adequately established he had sustained an economic loss for purposes of the restitution award—lost revenues—because he had had to close his automotive shop for two days when he stayed home in order to secure his residence and again later when he attended court hearings. He testified that the temporary closure of his business had resulted in a loss of sales and potential business from telephonic inquiries and drop-in customers. He stated that his gross income from his business was \$1,000 per day and that he had lost that revenue as a result of the offenses.

¶13 The victim’s testimony, which Sean “accept[s]” on appeal, also established he had based the value of his labor in repairing the ATV and re-keying the truck on the same rate he charged customers in his business, which was \$85 per hour. The victim presented the juvenile court with two invoices from his business computing his labor costs for those repairs based on that hourly rate. With respect to the lost earnings claim, rather than awarding him \$1,000 per day (or \$125 per hour) as he had requested, the court calculated the victim’s loss based on the rate of \$85 per hour for the time he had spent in court hearings and the two days he had had to stay home after the burglary.

¶14 The record contains sufficient evidence from which economic loss could be found. The victim’s testimony and documentary evidence presented at the hearing established the victim had sustained compensable economic losses. We cannot say the award was unreasonable or overly speculative. *See State v. Howard*, 168 Ariz. 458, 460, 815 P.2d 5, 7 (App. 1991); *see also People v. Duvall*, 908 P.2d 1178, 1180 (Colo. Ct. App. 1995) (value of time spent by victim company’s employees on theft-related chores, “based upon their hourly rates,” properly included in restitution award, “regardless of whether any funds in addition to the employees’ regular salaries were expended by the victim company”); *State v. Russell*, 878 P.2d 212, 213 (Idaho Ct. App. 1994) (“time spent in court by a self-employed victim during which [he] could otherwise be pursuing his vocation,” valued by hourly rate used in his business, constituted “economic loss” for restitution purposes).

¶15 Sean questions the standard the court used to determine the “value” of the victim’s time in computing his lost earnings and compensating him for his work on the truck and ATV. He contends the victim’s time should have been valued at the rate of \$15 per hour instead of \$85 because the victim’s net annual income in 2006 was only \$30,000. But the juvenile court is in the best position to judge the credibility of witnesses and to draw reasonable inferences from their testimony. *In re Andrew A.*, 203 Ariz. 585, ¶ 9, 58 P.3d 527, 529 (App. 2002). We do not reweigh evidence, but, rather, “look only to determine if there is sufficient evidence to sustain the juvenile court’s ruling.” *Id.*; *see also State v. Dixon*, 216 Ariz. 18, ¶ 14, 162 P.3d 657, 661 (App. 2007); *In re Maricopa County Juv. Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996). As discussed above, the victim testified he charged \$85 per hour for labor in his automotive shop and the juvenile court clearly credited that testimony, which adequately supported the court’s calculation of the victim’s loss. We have no basis for interfering here.

¶16 Finally, the victim testified that, based on his inquiries, he learned that a repair company would have charged him \$55 per hour to repair the two doors. If the victim had hired a third party to make those repairs, the cost would have been a required part of the restitution award which would include the damage to the doors having resulted from Sean’s breaking into the house. *See Morris*, 173 Ariz. at 17, 839 P.2d at 437. As discussed above, the fact that the victim repaired the doors himself did not disqualify him from receiving restitution for the value of his labor; the loss was a recoverable economic loss. On this

record the juvenile court did not abuse its discretion in awarding restitution in the amounts it did. *See Erika V.*, 194 Ariz. 399, ¶ 2, 983 P.2d at 769.

Disposition

¶17 The juvenile court's disposition order and restitution award are affirmed.

JOHN PELANDER, Chief Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge